

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 16336 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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- Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?
2 To be referred to the Reporter or
not ?
3 Whether their Lordships wish to see
the fair copy of the judgment ?
Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?
5 Whether it is to be circulated to
the civil judge ?

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SHAIKH ISMAIL ABBAS - Petitioner(s)
Versus
GUJARAT STATE ELECTION COMMISSION & 2 -
Respondent(s)

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Appearance :

MR BB NAIK for Petitioner(s) : 1,
MR NV ANJARIA for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,
DIPEN DESAI AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/10/2005

CAV JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the action of the respondents of not including the name of 758 persons in the Voters' List prepared for the election of Deesa Municipality now to be held on 25/10/2005.

2. It is the contention on behalf of the petitioner that earlier the names of all the aforesaid 758 persons were in the Voters' List in the Ward No.11 of Deesa Municipality. However, when the fresh Voters' List is prepared and published by the respondent No.2 herein, the Mamlatdar and the Electorate Registration Officer, Deesa Municipality under the provisions of the Gujarat Municipalities (Registration of Voters), Rules, 1994 (hereinafter referred to as “the Rules” for convenience), it is found that the names of aforesaid 758 persons are missing and their names are not included in the said Voters' List either for ward No.11 or for any

other Ward and therefore, the present petition has been filed for appropriate writ, order and/or directions directing the respondents to include the name of the petitioner and other 757 persons, whose details have been mentioned in para 10 of the petition, in the Voters' List prepared for the election of Deesa Municipality in Ward No.11 for the area mentioned in para 20-A of the petition.

3. Mr.B.B. Naik, learned advocate appearing on behalf of the petitioner has submitted that the State Government by notification published in the Gujarat Government Gazette dtd.19/12/2004 declared that the General Election of the Deesa Municipality is to be held and for that purpose, determined 36 Councilors to be elected from 12 Wards and also determined Reserved Seat for the Scheduled Caste, Scheduled Tribe, Backward Class and for Women. It is also further submitted that in pursuance of the said notification issued by the State Government dtd.14/2/2005, the respondent No.1 - Gujarat State Election Commission (hereinafter referred to as "the Election Commission" for convenience) published proposed Voters' List of 12 Wards of Deesa Municipality area inclusive of the area in which, according to the petitioner he is residing and other voters whose names are excluded from

the Voters' List, are residing in the Ward No.11. It is also further submitted that the Election Commission also determined reserved seats ward-wise and invited objections against the same. It is also submitted on behalf of the petitioner that one Shaikh Ahemad Haji Rahim Baksh and 50 other, resident of the area comprising of Ward No.11 submitted their objections against the same on 23/2/2005, which was duly received by the respondent No.1 – Election Commission and various anomalies were pointed out by the said persons. It is also further submitted that the Election Commission by Notification dtd.21/5/2005, published Final Constitution of 12 Wards of Deesa Municipality area and also the reserved seats for various categories are published. It is also further submitted that after the final publication of the constitution of the Wards and allocation of reserved seats, the respondent No.2 – Mamlatdar and Electorate Officer, Deesa Municipality, prepared Preliminary Voters' List under the provisions of the Rules and published an advertisement under Rule 4 of the Rules on 20/6/2005 in the local news paper. It is submitted that as the petitioner did not find his name in the said Voters' List of Ward No.11 or any other Ward, and there are other 757 persons whose names are also not included in the said Voters' List either of Ward No.11 or in any other Ward, though the said persons were voters of Deesa

Municipality and their names were included in the Voters' List of Ward No.11 in the past and their names are included in the Voters' List for the area comprising in Ward No.11 of Deesa Municipality for the Gujarat State Legislative Assembly Elections and the Parliament Election, the petitioner made a detailed representation dtd.29/6/2005 to the respondent No.2 pointing out the said facts and requested him to include the names of said persons who are left out in the Preliminary Voters' List.

4. It is also the contention on behalf of the petitioner that the respondent No.2 – Mamlatdar and Electorate Officer, without considering the said representation / objections of the petitioner and without taking into consideration the relevant provisions of the Rules, published Final Voters' List without including the names of petitioner and other 757 persons in the said Voters' List and the petitioner is also communicated by communication dtd.18/7/2005 by the respondent No.2 – Mamlatdar and Electorate Officer, rejecting his representation / objections by stating that as per the de-limitation of the Wards made by the respondent No.1 – Election Commission, vide Notification dtd.21/5/2005, the persons residing in the area of Ward No.11 and 12 are included in the Voters' List and the persons residing in the area which

are not included in the said Wards, are not included in the Voters' List and the representation is filed. Therefore being aggrieved by and dissatisfied with the non-inclusion of his name and names of other 757 persons in the Voters' List for the election of Deesa Municipality, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

5. Mr.B.B.Naik, learned advocate appearing on behalf of the petitioner has relied upon Rule 4 of the Rules and has submitted that the Electorate Officer is required to prepare and publish a Draft list of voters for each Ward of the Municipal Borough in the following manner;

[1] The electoral roll of the Gujarat Legislative Assembly prepared and revised in accordance with the provisions of the Central Law for the time being in force shall be taken as the basis for the purpose of preparing the list of voters.

[2] Names of all the persons residing within the geographical limits of the ward and whose names are included in the electoral roll of the Gujarat Legislative Assembly shall be included in the draft list of voters of said ward. And considering the same, the Electorate

Registration Officer is required to publish a Final Voters' List, after following necessary procedure as required under Rule 4, 5, and 6 of the Rules. It is submitted that the Electorate Registration Officer is required to publish Final Voters' List as contemplated under Rule 7 of the Rules and on such publication, the list of voters along with the list of amendment shall be final list of voters for the Municipal Borough. It is also further submitted that such voters's list for each ward as published under Rule 7 of the Rules shall be conclusive evidence for the purpose of determining whether any person enroll in such a list shall be entitled to vote at the election from that ward. It is also further submitted that so far as the petitioner and other 757 persons whose names are not included in the final Voters' List now, were there in the Voters' List for the Gujarat State Assembly Election published in the year 2002 for the area known as Mamadpur – Nava Deesa, which is a part of Deesa Municipality. Still, however, their names are excluded from the Voters' List prepared for the ensuing election of Deesa Municipality and therefore, the same is in breach of Rule 4 of the Rules. It is also further submitted that even in the Voters' List of election of Deesa Municipality, the names of the petitioner and other 757 persons were in the Voters' List of Deesa Municipality for Ward No.11 and therefore also, the action of the respondents in not

including the names of the petitioner and other 757 persons in the Final Voters' List for Ward No.11 of Deesa Municipality or for any other Ward of Deesa Municipality is arbitrary, illegal and contrary to the Rules and hence the same requires to be quashed and set aside.

6. Mr.BB Naik has also relied upon sec.9 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as “the Act” for convenience) and has submitted that as per sec.9 of the Act, for every ward, there shall be a list of voters and the the list of voters shall be the same as the electoral roll of the Gujarat Legislative Assembly prepared and revised in accordance with the provisions of the Central Law for the time being in force nd therefore as per sub-sec.4 of sec.4 of the Act, the list of voters for any ward under sub-sec.2 of sec.9 shall remain in operation until a revised list of voters with respect to the municipal borough so published and therefore, it is submitted that the names of the petitioner and other 757 persons were in the final Voters' List for Ward No.11 of Deesa Municipality in the last election and no new Voters' List is published and the earlier list of voters shall be continued and therefore, it is requested to allow the present petition.

7. Mr.Naik has also further submitted that the respondent No.2 herein has no jurisdiction to delete the names on the ground that they are not residing within the local limits.

8. Meeting with the preliminary objections raised on behalf of the respondents with regard to the maintainability of the petition under Articles 226 of the Constitution of India, Mr.Naik has submitted that as such the petitioner and other 757 persons whose names are not included in the final Voters' List, have in fact, no other alternative efficacious remedy available to them and in fact, there is no remedy available to them. It is submitted that as per sec.10 of the Act, a person whose name is in the list of voters is qualified to vote and ever person whose name is not in the said list shall not be qualified to vote at the election of the area for ward to which such list pertains and as per sec.14 of the Act, if validity of any election of councilor is brought in question by any person qualified to vote at the election to which such question refers or by any candidate for such election, such person only can file election petition before the District Court. Therefore, it is submitted that only a person qualified to vote at the election to which such election refers or any candidate, the election petition is maintainable and the election can

be challenged. Therefore, it is submitted that when the names of the petitioner and other 757 persons have not been included in the Final Voters' List, they are not voters as contemplated under sec.10 of the Act and therefore, they cannot even challenge the legality and validity of the election. It is also further submitted that as such, the Election Tribunal has no jurisdiction to include the names of the petitioner and other 757 persons in the Voters' List and accordingly to that extent the petitioner and other 757 persons are remedy less and therefore, the only remedy available to the petitioner and other persons, is to file a writ petition before this Court under Article 226 of the Constitution of India challenging the legality and validity of the non-inclusion of the names of the petitioner and other 757 persons in the Final Voters' List.

9. Mr.BB Naik learned advocate for the petitioner has also relied upon the judgment of the Bombay High Court in the case of Keshav Govind Kulkarni Vs. Extras Assistant Judge, South Satara and ors., reported in AIR 1960 Bombay 127 and submitted that as held by the Bombay High Court, the petitioner in an election petition cannot object to electoral roll and therefore, it is submitted that when the petitioner cannot challenge the electoral roll in an election petition, the only

remedy available to the petitioner is to file a writ petition before this Court under Article 226 of the Constitution of India.

10. Relying upon the judgments of the Hon'ble Supreme Court in the case of Lakshi Charan Sen Vs. A.K.M. Hasan Uzzaman, reported in AIR 1985 SC 1233, in the case of Election Commissioner of India through Secretary Vs. Ashok Kumar and ors., reported in AIR 2000 SC 2979 and in the case of NP Pannu Swami Vs. Returning Officer, Namkal Constituency, reported in AIR 1952 SC 64, Mr.Naik, learned advocate has submitted that there is no bar to entertain a petition under Article 226 of the Constitution of India in which the question involved is with regard to non-inclusion of the name of th persons in the Voters' List.

11. Mr.BB Naik, leaned advocate appearing on behalf of the petitioner has relied upon the of learned Single Judge of this Court in the case of Mahmadhusein Kurbanhusein Mithiborwala Vs. Onali Fiddali and ors., reported in AIR 1969 Gujarat 334, in support of his submission that the petition under Article 226 of the Constitution of India, is the only remedy available to the petitioner against non-inclusion of the names of the petitioner and said 757 persons, as the said question cannot be

adjudicated in election petition and therefore, it is requested to entertain the present petition and grant the relief as prayed for.

12. Relying upon the judgment of the Hon'ble Supreme Court in the case of the Chief Commissioner of Ajmer and anr., Vs. Radhey Shyam Dani, reported in AIR 1957 SC 304, Mr.Naik has submitted that it is of the essence of the election that proper electoral roll should be maintained. It is also further submitted that, in that case when it was found that the electoral roll, which was authenticated and published by the Chief Commissioner, was not in conformity with the provisions of the Act, it was held that the same could not have formed the basis of any valid election to be held to the Ajmer Municipal Committee. Therefore, it is required to allow the present petition and grant the relief as prayed for.

13. Mr.BB Naik, learned advocate appearing on behalf of the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of Pundlik Vs. State of Maharashtra, and ors., reported in (2005) 7 SCC 181 and has submitted that in the said judgment, the Hon'ble Supreme Court considered and distinguished the judgment rendered in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj)

Sahakari Dugdha Utpadak Sanstha and ors. Vs. State of Maharashtra and ors., reported in (2001) 8 SCC 509 and has observed that “it is true that according to this court, normally High Court would not interfere with the exercise of the powers under Article 226 of the Constitution of India at the stage of preparation of list of voters, but such action must be in accordance with law” and it is also submitted that while entertaining the petition under Article 226 of the Constitution of India, the Hon'ble Court has directed the Collector to prepare a fresh electoral roll and therefore it is requested to entertain the present petition under Article 226 of the Constitution of India.

14. Per-contra, Mr.N.V. Anjaria, learned advocate appearing on behalf of the Election Commission, relying upon Article 243-ZG of the Constitution has submitted that the list of voters prepared for Deesa Municipality election is an integral part of the election process and having referred to Sec.2(7)(A) of the Gujarat Municipalities Act, 1963, read with Article 243-ZG of the Constitution of India, no relief can be granted to the petitioner in the present petition. It is also further submitted by him that granting of any relief to the present petitioner would tantamount to call i question the election and the same will have

an adverse effect of delaying and retarding the already due election of the Deesa Municipality. It is also further submitted by Mr. Anjaria that the election programme of the Deesa Municipality is already published by Notification dtd. 30/9/2005 and the last date for accepting the Nomination Form is 11/10/2005 and the election is to be held on 25/10/2005. It is also further submitted that the Final Voters' List is conclusive and has become final and has come into force immediately under Rule 7(2) of the Rules and under sec. 9(4) of the Act and the same has to remain in operation. It is also further submitted that the list of voters has been finalized and published and the same has been prepared Ward-wise. It is also further submitted that the Notification de-limiting the Wards of the Deesa Municipality was published by the Election Commission on 21/5/2005 and the final list of voters prepared under sec. 9 of the Act has already been published on 18/7/2005 and the same has come into force.

15. It is also further submitted that the State Election Commission will be disabled from completing the election in time, if this Court interferes at this stage in the present petition. It is also further submitted that it is not a question of inclusion of name of the petitioner and other 757 persons in the Voters' List, but other persons have also

valuable right under the Act and the Rules to object the inclusion of the names of the petitioner and other persons and therefore, if the present petition is entertained at this stage, they will be deprived of their right to object the inclusion of the name of the petitioner and other 757 persons in the list of voters and therefore, it is requested not to entertain the present petition.

16. It is also further submitted that the Final Voters' List has been prepared and published by the respondent No.2 after following the due procedure as required under the Rules and therefore, it is requested to dismiss the present petition. It is also further submitted that so far as the prayer of the petitioner to include the name of other 757 persons in the Final Voters' List is concerned, it is submitted that those persons have never objected to non-inclusion of their names in the Final Voters' List for the election of Deesa Municipality and the petitioner is not having any power of attorney and/or authorized to file the petition on their behalf and therefore, the present petition is not required to be entertained and/or no relief as prayed for to include the names of the those 757 persons can be granted. It is also further submitted that in fact ample opportunity was given to the petitioner and objections submitted

by the petitioner and those persons who have objected, are considered and thereafter, the Final Voters' List has been published and therefore, it is requested to dismiss the present petition.

17. Mr.Dipen Desai, learned AGP for State while opposing the present petition has submitted that as such the present petition is required to be dismissed on the ground of suppression of material facts. He has further submitted that the final Voters' List is published by the respondent No.2 after following due procedure and considering the objections received by the respondent No.2 in accordance with the provisions of the Rules. It is also further submitted that the petitioner raised the objections on 29/6/2005 regarding non-inclusion of the names of the petitioner and other 757 persons in the Ward No.11 of the Deesa Municipality and on 29/6/2005, the petitioner was called for personal hearing on 8/7/2005 and was asked to remain present with necessary evidence on 8/7/2005. However, the petitioner did not remain. However, thereafter, he remained present on 11/7/2005 and hearing took place and in fact it was found that the petitioner and other 757 persons were found to be not residing within the local limits of the Deesa Municipality more particularly in Ward No.11 and therefore, their names were not included

in the final Voters' List. It is also further submitted that in fact, the petitioner himself was satisfied that those persons are not residing within the local limits and their names are not required to be included in the Voters' List and he has also given a writing signed by him stating that he is satisfied with the same and he has nothing to say about the non-inclusion of the name of those persons. Copy of the said statement signed by the petitioner dtd.11/7/2005 is produced on page No.158 of the affidavit in reply. It is submitted by Mr.Dipen Desai, learned AGP that inspite of the aforesaid writing given by the petitioner, there is no reference to the same is made by the petitioner in the entire petition and the petitioner has suppressed the same and therefore, the petitioner is not entitled to any equitable and discretionary relief in the present petition under Articles 226 of the Constitution of India. He has also further submitted that as it is found that the petitioner and other 757 persons, for whose benefits the present petition has been filed are not residing within the local limits of Deesa Municipality and therefore, their names are not included in the Voters' List and therefore, it is requested to dismiss the present petition.

18. Mr.Dipen Desai, learned AGP has relied upon the judgment

of the Hon'ble Supreme Court in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and ors. Vs. State of Maharashtra and ors., reported in (2001) 8 SCC 509 and has submitted that as held by the Hon'ble Supreme Court, preparation of the electoral roll being an intermediate stage in the process of election of the managing committee and the election process having been set in motion, the High Court should not stay the continuation of election process even though there may be some alleged illegality or breach of the Rules while preparing the electoral roll. It is also further submitted that as held by the Hon'ble Supreme Court in the aforesaid case, once the result of the election is declared, it would be open to the appellant to challenge the election of the returned candidate, if aggrieved, by means of an election petition and, therefore, it is requested to dismiss the present petition.

19. Mr.Dipen Desai, learned AGP has also relied upon the decision of the Full Bench in the case of Gaheda Group Seva Sahakari Mandli Limited Vs. respondent. D. Rohit, Autho.Officer & Co.Op.Officer (Marketing) in the Special Civil Application No.2489 to 2465 of 2005, in which this Court has negatived the contention dealing with the provisions of the Agricultural Produce Market Act which are

para-materia to the effect that a person whose name is not included in the Voters' List is not entitled to file the election petition and the Full Bench has also rejected the submission that such person can not file the election petition who is either qualified to be elected or qualified to vote and therefore, it is requested to dismiss the present petition.

20. Meeting with the decisions relied upon by the petitioner which are stated hereinabove, Mr.Desai has submitted that those judgments are in the facts of the particular case and as such are not applicable to the facts of the present case and on the contrary the same supports the contention on behalf of the respondent that at this stage, the petition should not be entertained and in most of the aforesaid cases, the actions which was challenged was regarding inclusion of the name of some persons in the Voters' List though they were not entitled to cast their vote and/or entitled to be voter and in that case, even the Hon'ble Supreme Court has held that once the final Voters' List is published, the same is conclusive proof and the same cannot be challenged and therefore, it is requested to dismiss the present petition.

21. Heard the learned advocates appearing on behalf of the

parties. After considering the submissions on behalf of the parties, this court would like to consider whether the petition under Article 226 of the Constitution of India challenging the action of the respondent of not including the name of the petitioner and other 757 persons in the Voters' List is maintainable or not, and if maintainable, whether this Court would like to entertain the present petition under Article 226 of the Constitution of India or not at this stage and/or whether the petitioner and other persons whose names are not included in the Voters' List, have any alternative remedy or not.

22. It is required to be noted that the Voters' List is prepared and published after following the due procedure as required under Rule 4 to 7 of the Rules. As per sub-rule 4, the Electorate Registration Officer is required to prepare and publish a draft list of voters for each of the wards of the Municipal Borough and is required to publish said list by causing a copy thereof to be displayed for public inspection in an auspicious place in the main office of the municipality and at such other places, as he may decide and keep it so displayed for a period of 10 days. As per sub-rule 9 of Rule 4, the Electorate Registration Officer shall on the day on which the draft list is published, give notice, by advertisement in any two local

news papers of the fact of publication, places where such list is displayed and the places at which and the rate at which the copies of said list may be obtained. As per rule 5, on an application made to him in this behalf or on his own motion, the electorate registration officer if he satisfied that the list of voters is at variance with the relevant part of the electoral roll of the Assembly on account of any mistake, he shall amend the same or delete or add any entry in the draft list of voters. As per rule 6 of the Rules, any person who may have become entitled to be listed in the electoral roll of the Assembly under the Central Law and whose name has not been so included on the first date of the year in the draft list of voters is published, under sub-rule 4 of the rules may make not later than 10 days from the date of such application of the publication of the draft list of voters, an application to the electorate registration officer for inclusion of his name in the such list of voters for the relevant wards and the electorate registration officer if after making such summary inquiry as he may necessary is satisfied that the applicant is entitled to be registered in the relevant part of the electoral role of the assembly under the Central Laws , shall include the name of the applicant in the list of voters and as per rule 7, the electorate registration officer is required to prepare and publish the final Voters' List and as per sub-rule 3 of the

Rule, the said final Voters' List shall be conclusive evidence for the purpose of determining whether any person enroll in such a list shall be entitled to vote at the election from that ward.

23. In the present case, as stated hereinabove, and so mentioned in the affidavit in reply filed on behalf of the respondent NO.2, necessary procedure as required to be followed, was followed and the petitioner's objections / representation came to be considered and even summary inquiry was also conducted in presence of the petitioner and even the petitioner was satisfied that the name of the petitioner and other 757 persons are rightly not included as they are not residing within the local limits of the Deesa Municipality as per new de-limitation of wards and therefore, it cannot be said that as such there is any illegality committed by the respondent No.2. Even otherwise, as held by the Hon'ble Supreme Court in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and ors. Vs. State of Maharashtra and ors., reported in (2001) 8 SCC 509, preparation of electoral roll is a part of election process and if there is any breach of the rules in preparing the electoral roll, the same can be called in question after declaration of the result of the election by means of an election

petition before the Tribunal. It is also held by the Hon'ble Supreme Court in the said judgment that the preparation of the electoral roll being intermediate stage in the process of election of the Managing Committee of a Specified Society, on the election process having been set in motion, High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of the rules while preparing the electoral roll. In the present case, as stated hereinabove, Notification is already published declaring the election programme and therefore, the present petition is not required to be entertained at this stage, more particularly when the other persons have also a valuable right to object the inclusion of the name of the petitioner and other 757 persons in the Voters' List and if the present petition is entertained at this stage, the valuable rights of those persons to oppose the inclusion of the name of the petitioner and other persons will be taken away and or it will further delay the election process and therefore, the present petition is not required to be entertained at this stage. At this stage, the observations made by the Hon'ble Supreme Court in para 24 in the case of Laxmi Charan Sen (Supra) are required to be considered which reads as under;

“24. The only question which remains outstanding is

whether the preparation and publication of electoral rolls are a part of the process of “election” within the meaning of Art.329(b) of the constitution. That Article provides;

“Bar to interference by courts in electoral matters.-
Notwithstanding anything in this Constitution,

(a) xxx xxx xxx

(b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.”

On the conclusion of arguments in this case, we had passed an order on March 30, 1982 by which we had indicated that we will pronounce upon the question abovestated later in our judgment. In the light of the conclusion recorded by us that the petitioners have not made out any case of the grant of relief claimed by them, it is unnecessary for us to decide the question whether the expression “election” which occurs in Article 329(b), comprehends the preparation and publication of electoral rolls. Besides, as indicated by us in the order dated March 30, 1982, the view which we took was that though the High Court was justified in entertaining the writ petition and issuing a rule therein since, the writ petition apparently contains a challenge to several provisions of Election Laws, it was not justified in passing any order which would have the effect of postponing the elections which were then imminent. Even assuming, therefore, that the preparation and publication of electoral rolls are not a part of the process of “election” within the meaning of Article 329(b), we must reiterate our view that the High Court ought not to have passed the impugned interim order, whereby it is not only assumed control over the election process but, as a result of which, the election to the Legislative Assembly stood the risk of being postponed

indefinitely. The order dated March 30, 1982 which we will presently reproduce, contains our reasons in support of this conclusion. Very often, the exercise of jurisdiction, especially the writ jurisdiction, involves questions of propriety rather than of power. The fact that the Court has the power to do a certain thing does not mean that it must exercise that powers regardless of the consequences. As observed by a Constitution Bench of this Court in *N.P.Ponnuswami v. Returning Officer, Namakkal Constituency*, 1962 SCR 218 : (AIR 1952 SC 64):

“Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a manner of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections shall be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted”.

24. Even the Full Bench of this Court in the aforesaid petition in the case of *Daheda Gram Seva Sahakari Group Mandali Limited (Supra)* has also negated the contention on behalf of the petitioner to the effect that a person whose name is not included in the Voters' List is not entitled to file election petition and that the Full Bench of this Court has rejected the submission that the only such person can file election petition who is either qualified to be elected or qualified to vote. Therefore, the contention on behalf of the petitioner that as the names of

the petitioner and other 757 persons are not included in the Voters' List, they cannot file election petition, as they are not voter as contemplated under sec.9 of the Act, has no substance and in view of the above, the petitioner has an alternative remedy and the only remedy available with the petitioner is to file an election petition subsequently. Granting of any relief at this stage would delay the election process, which is not permissible in view of the aforesaid decisions of the Hon'ble Supreme Court and the mandate in the Constitution of India.

25. Now, dealing with the judgments, upon which the reliance has been placed by the learned advocate for the petitioner, firstly in the case of Keshav Govind Kulkarni (Supra) it is required to be noted that there the dispute was that some of the voters in the Voters' List were below the age of 21 years and therefore they were not entitled to cast their vote and therefore, the votes recorded by them are required to be held as invalid votes. Considering the aforesaid dispute, the Hon'ble Supreme Court negated the said contention and has held that once the Final Voters' List is published and it was not objected to earlier, it is not open for the petitioner to challenge the same in an election petition, as the Voters' List is final and conclusive. Therefore the said judgment is

not helpful to the petitioner at all.

26. So far as the judgment relied upon in the case of Laxmi Charan Sen (Supra) is concerned, it is on the contrary goes against the petitioner, as though it is held that the petition might be maintainable at this stage, the same is not required to be entertained.

27. So far as the reliance placed upon the judgment of this Court in the case of Mahmadhusein Kurbanhusein Mithiborwala (Supra) is concerned, there also in an election petition the challenge was with regard to the inclusion of the names of some persons in the Voters' List and this court did not entertain and/or accepted the submission and/or challenge, on the ground that the Voters' List once published, becomes conclusive.

28. So far as the reliance placed upon the latest judgment of the Hon'ble Supreme Court in the case of Kundlik (Supra) is concerned, it is pertinent to note that in the said case, the Hon'ble Supreme Court has distinguished the judgment in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and ors.

Vs. State of Maharashtra and ors., reported in (2001) 8 SCC 509, on facts and it was found that the electoral roll was not prepared / amended in accordance with law and no procedure was followed and/or objections were not considered at all and election process was not likely to be affected. Para 14 and 15 of the said Kundlik case are required to be considered, which is as under;

“14. In our considered opinion, the ratio laid down in Sant Sadguri Janardan Swami does not apply to the facts case. In that case, objections against the publication of provisional electoral roll of the society were filed which were considered by the Collector and disposed of. Final electoral roll was published on 2/7/1999. Election programme was drawn by him on 21/10/1999. Thereafter, the petitioner filed a petition under Article 226 of the Constitution in the High Court. A prayer was made in the petition that the order passed by the Collector on 21/10/1999 was required to be set aside. Obviously, therefore, the election process was already in motion and prayer of the petitioner was for quashing of the Schedule for holding election. In the light of the factual position before the Court, the petition was dismissed and it was held that the only remedy available to the aggrieved petitioner was to the aggrieved petitioner was to file election petition after the election is over in accordance with Rule 81 of the Rules.

15. The Court stated: (SCC page.518, para 12).

“12. In view of our finding that preparation of election roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been

set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal.”

29. Therefore, considering the judgment in the case of Kundalik (Supra), the judgment in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and ors (Supra) will be applicable in full force so far as the facts of the present case are concerned, as in the present case, as stated above, necessary procedure as required to be followed under rule 4 to 7 of the Rules before publishing the final Voters' List was followed; the representation / objections submitted by the petitioner came to be considered; summary inquiry was conducted by the respondent No.2 and thereafter having found that all those persons are not residing within the local limits of Deesa Municipality and therefore, their names are not included in the final Voters' List and therefore, it cannot be said that the action of the respondent No.2 is illegal, arbitrary and/or contrary to law. Even

otherwise also, as stated above, the election process has already been started, Notification for holding the election is already published on 30/9/2005 and the last date of acceptance of the Nomination Form is 11/10/2005 and therefore also the present petition is not required to be entertained at this stage.

30. Even on merits also, the present petition is required to be dismissed on the ground that the learned advocate appearing on behalf of the respondents are right in their submissions that all those 757 persons whose names are not included in the final Voters' List for the ensuing election of Deesa Municipality and for whose benefits the present petition is filed have never objected to non-inclusion of their names and therefore, they have accepted the same and therefore, the petitioner has no locus to file the present petition on their behalf. Even otherwise, the representation / objections submitted by the petitioner came to be considered by the respondent No.2 and summary inquiry was held and inspection was also carried out wherein the petitioner was also present on 11/7/2005 and the petitioner was satisfied that all those persons are not residing within the local limits of Deesa Municipality and therefore, their names are rightly not included in the final Voters' List and the petitioner

has also submitted writing signed by him to that effect, which is suppressed by the petitioner in the present petition and therefore, it is now not open for the petitioner to challenge the same in this petition under Article 226 of the Constitution of India. As stated hereinabove, if the names of the petitioner and other 757 persons are ordered to be included in the final Voters' List at this stage, then the valuable right of the other persons to object to the inclusion of the names of the petitioner and other persons would be defeated which is also not permissible and therefore also, the prayers of the petitioner to include the names of the petitioner and other 757 persons in the final Voters' List cannot be granted. Even otherwise, as stated hereinabove and as per the affidavit in reply filed on behalf of the respondent No.2, the names of the petitioner and other 757 persons were not included in the final Voters' List as it is found that they are not residing within the local limits of Deesa Municipality more particularly in Ward No.11. These are disputed question of facts which cannot be determined in this petition under Article 226 of the Constitution of India and therefore also, the present petition is not required to be entertained.

and the same is required to be dismissed and is accordingly dismissed.

Rule is discharged.

(M.R. SHAH,J.)

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